

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ALASKA
3

4 NINILCHIK CHARTERS, LLC,
5 Plaintiff,

6 vs.

7 CATERPILLAR, INC; a Delaware
8 Corporation,
9 Defendant.

10
11 Case No. A04-0250 CV (JKS)

12 DEPOSITION OF MICHAEL FLORES,

13 Pages 1-177, inclusive

14 Commencing at 10:00 a.m.

15 Wednesday, November 9, 2005

16 Anchorage, Alaska
17

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10 DEPOSITION OF MICHAEL FLORES,
11 taken on behalf of the defendant, pursuant to notice, at
12 the law offices of Hughes, Bauman, Pfiffner, Gorski and
13 Seedorf, 3900 C Street, Suite 1001, Anchorage, Alaska
14 before Rosie S. Scott, Certified Shorthand Reporter for
15 Alaska Stenotype Reporters and Notary Public for the
16 State of Alaska.
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1 A-P-P-E-A-R-A-N-C-E-S

2

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17 Reported By: Rosie S. Scott, Certified
Shorthand Reporter

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I-N-D-E-X

EXAMINATION BY:	PAGE
Mr. Bir	5
Mr. Anderson	168
Further by Mr. Bir	171

EXHIBITS:

Exhibit 1, Deposition Notice	11
Exhibit 2, Extended Service Contract	64
Exhibit 3, Documents	70
Exhibit 4, First Amended Complaint	90
Exhibit 5, Travel Log	108
Exhibit 6, Wilkie's Invoice	141
Exhibit 7, Ninilchik Find Report	153
Exhibit 8, Calendar	162
Exhibit 9, Photo of Serial Number Engine	168

1 serial number for that?

2 A. Yes.

3 MR. ANDERSON: That's the one that's currently
4 in it?

5 BY MR. BIR:

6 Q. When you bought it.

7 A. Yeah, when we bought it, starboard motor is
8 01Z06986.

9 Q. Now, was that engine under warranty when you
10 bought it?

11 A. No.

12 Q. It was not?

13 A. It was not.

14 Q. So there was no warranty applicable to that
15 engine?

16 A. Correct, no warranty from Caterpillar, nothing
17 in paperwork.

18 Q. Okay. When you say "nothing in paperwork," was
19 there any warranty applicable to that engine at all, from
20 anybody, that you're aware of?

21 A. Not that we were given.

22 Q. Did Dustin Clark give you a warranty on that
23 engine?

24 A. No.

25 Q. To the best of your knowledge, there was no

1 warranty at all applicable to that engine?

2 A. Correct.

3 Q. You had mentioned that the ARCTIC ENDEAVOR,
4 when it was still owned and in the possession of
5 Dustin Clark, had sunk, in 1994?

6 A. No. It had sunk. I don't know if he was in
7 possession of it.

8 Q. Okay.

9 A. I don't know when he bought the boat.

10 Q. But it was a 1978, I believe, the vessel?

11 A. Correct.

12 Q. So when you purchased the boat from Mr. Clark,
13 he informed you that it had sunk?

14 A. Correct.

15 Q. Did he tell you how he knew that?

16 A. It's in the documentation that we have on board
17 the boat.

18 Q. Oh, it is in the documentation?

19 A. Correct.

20 Q. And although we'll get a chance to look at that
21 documentation later on, from the best of your
22 recollection, can you tell me what is in that
23 documentation? Or is there anything in that
24 documentation that tells you why or how the boat sunk?

25 A. No. I was told how it sunk. But there's

1 some enemies and probably some decent friends in the
2 business.

3 Did you try to work out with any other charter
4 boats maybe referring customers, or does it just not work
5 like that?

6 A. It does work like that. But to give an idea,
7 in August, like when the boat broke down, The Fish House
8 books for 60 boats. There's no space for the rest of the
9 month. Everybody is full.

10 Q. So it's not a matter of -- there just wasn't
11 any availability?

12 A. No. We'd much rather deal with not catching
13 any fish than deal with 12 pissed off people every day,
14 telling them the boat is broken, and they're not going
15 fishing, because I can't reschedule them, we can't find a
16 boat for them. It's not a pretty deal.

17 Q. Right. Okay. Just to confirm, in your
18 discovery responses, I believe in response to the damages
19 that you're seeking in this lawsuit, you are looking to
20 recover the cost of replacing the failed 3208; is that
21 correct?

22 A. Correct.

23 Q. So that's roughly \$15,000 that you had to pay
24 Wilke's to do that overhaul; is that correct?

25 A. Right.

1 Q. And then you're seeking \$60,000 in lost profits
2 for the time period that the boat was down; is that
3 correct?

4 A. That's correct.

5 Q. So we have \$15,000 for the replacement cost,
6 and \$60,000 for lost profits, and that's the only damages
7 you're seeking in this lawsuit, correct, that you're
8 aware of at this point?

9 MR. ANDERSON: I mean, if that's what you're
10 aware of.

11 THE WITNESS: Yeah, that sounds correct.

12 BY MR. BIR:

13 Q. Okay. When the engine failed on August 10th,
14 did it cause any damage to any other part of the boat?

15 A. As far as?

16 Q. As far --

17 A. No. It didn't go through the hull or anything
18 like that.

19 Q. So it didn't cause any damage to any part of
20 the boat?

21 A. There's no structural damage.

22 Q. Okay. Aside from the block breaking and the
23 shaft breaking, did it cause any damage to any part of
24 the engine, that you're aware of?

25 A. What do you mean?

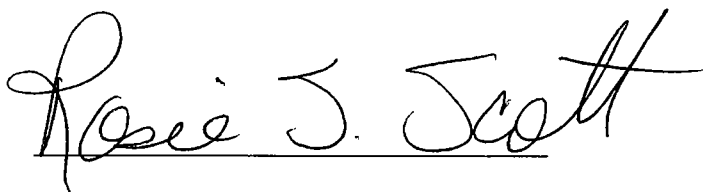
1 REPORTER'S CERTIFICATE

2 I, ROSIE S. SCOTT, CSR, hereby certify:

3 That I am a Certified Shorthand Reporter
4 for Alaska Stenotype Reporters and Notary Public for the
5 State of Alaska; that the foregoing proceedings were
6 taken by me in computerized machine shorthand and
7 thereafter transcribed by me; that the transcript
8 constitutes a full, true and correct record of said
9 proceedings taken on the date and time indicated therein.

10 Further, that I am a disinterested person to
11 said action.

12 IN WITNESS WHEREOF, I have hereunto
13 subscribed my hand and affixed my official seal this
14 9th day of December, 2005.

15
16
17
18 

19 ROSIE S. SCOTT
20 Certified Shorthand Reporter
21 My Commission Expires
22 8/16/08

